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GREENSBORG), NC 27420		ART UNIT PAPER NUMBER		
			1797		
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			03/29/2010	ELECTRONIC	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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	Application No.	Applicant(s)					
Office Action Occurrence	10/590,593	DAUTE, PETER					
Office Action Summary	Examiner	Art Unit					
	PAMELA WEISS	1797					
The MAILING DATE of this communication app Period for Reply	ears on the cover sheet with the c	orrespondence addr	ess				
A SHORTENED STATUTORY PERIOD FOR REPLY WHICHEVER IS LONGER, FROM THE MAILING DA - Extensions of time may be available under the provisions of 37 CFR 1.13 after SIX (6) MONTHS from the mailing date of this communication. - If NO period for reply is specified above, the maximum statutory period w - Failure to reply within the set or extended period for reply will, by statute, Any reply received by the Office later than three months after the mailing earned patent term adjustment. See 37 CFR 1.704(b).	ATE OF THIS COMMUNICATION 6(a). In no event, however, may a reply be timil apply and will expire SIX (6) MONTHS from cause the application to become ABANDONEI	J. nely filed the mailing date of this com O (35 U.S.C. § 133).					
Status							
1)⊠ Responsive to communication(s) filed on <u>11 Fe</u>	bruary 2010.						
3) Since this application is in condition for allowan	ce except for formal matters, pro	secution as to the n	nerits is				
closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.							
Disposition of Claims							
4)⊠ Claim(s) <u>1-5,7-19 and 21-24</u> is/are pending in t	he application.						
,	4a) Of the above claim(s) is/are withdrawn from consideration.						
5) Claim(s) is/are allowed.							
6)⊠ Claim(s) <u>1-5,7-19 and 21-24</u> is/are rejected.							
7) Claim(s) is/are objected to.							
8) Claim(s) are subject to restriction and/or	· <u> </u>						
Application Papers							
9) The specification is objected to by the Examiner	·.						
10) ☐ The drawing(s) filed on is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.							
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).							
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).							
11)☐ The oath or declaration is objected to by the Exa	11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.						
Priority under 35 U.S.C. § 119							
12)⊠ Acknowledgment is made of a claim for foreign a)⊠ All b)□ Some * c)□ None of:	priority under 35 U.S.C. § 119(a)	-(d) or (f).					
 Certified copies of the priority documents 	· · ·						
2. Certified copies of the priority documents							
Copies of the certified copies of the prior	3. Copies of the certified copies of the priority documents have been received in this National Stage						
application from the International Bureau	application from the International Bureau (PCT Rule 17.2(a)).						
* See the attached detailed Office action for a list of	of the certified copies not receive	d.					
Attachment(s)							
1) Notice of References Cited (PTO-892)	4) Interview Summary	(PTO-413)					
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Da	ite					
Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date	5) Notice of Informal P 6) Other:	atent Application					
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DETAILED ACTION

1. Applicant's arguments filed 02/11/2010 have been fully considered but they are not persuasive. New grounds of rejection are set forth below as necessitated by amendment.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

- 3. Claim 21 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claim recites "fused together" which does not appear to be supported by the original filing and is a new limitation.
- 4. The following is a quotation of the second paragraph of 35 U.S.C. 112:
 The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
- 5. Claims 21-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
- 6. Regarding claim 21, the phrase "fused together" renders the claim indefinite because it is unclear how the fats are fused with the further lubricant.

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7. Regarding Claim 22, recites: "...production takes place by means of spray crystallization." Renders the claim indefinite because there is insufficient antecedent basis for this limitation in the claim. Claim 22 depends from claim 16 which is a method for processing thermoplastics. There is no step of production. It is unclear whether is the in the overall process of making the thermoplastics that the limitation of "production" takes place or in the "production" of the lubricant composition.

Information Disclosure Statement

8. The information disclosure statement filed 08/24/2006 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the information referred to therein has not been considered.

Claim Rejections - 35 USC § 103

- 9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
 - (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

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10. The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

- 1. Determining the scope and contents of the prior art.
- 2. Ascertaining the differences between the prior art and the claims at issue.
- 3. Resolving the level of ordinary skill in the pertinent art.
- 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
- 11. Claims 1-5, 8, and 14-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Worschech et al. (US 3,875,069) (referred to as '069) in view of Worschech et al. (4,637,887) (referred to as '887)

Regarding Claims 1-3:

Worschech et al. '069 discloses a lubricant composition for thermoplastic processing comprising (Abstract):

- a) at least one natural fat and oil ('069 C8 L35-45: cotton seed oil which will intrinsically possess an iodine number overlapping the claimed ranges) Worschech also discloses the natural oil may be hardened castor oil (C8 L43-47)
- b) at least one lubricant different from the natural fat and/or oil of component (a). ('069 C3 L1-22 mixed esters)

Worschech et al. '069 discloses the saturation of the long chained monocarboxylic acids affect the physical consistency of the product at room temperature and discloses that a monocarboxylic acid component saturated aliphatic monocarboxylic acid is solid while unsaturated are oil liquids at room temperature. ('069 C6 L31-51).

Worschech et al. '069 also discloses the lubricant component (b) is selected from the group of fatty acid esters of fatty alcohols, dicarboxylic acid esters of fatty alcohols and polyol fatty acid esters. (C3 L1-21) and (C6 L61-65)

Worschech et al. '069 et al. does not expressly disclose the iodine value below 10, or below 8, or between 0.1 and 5.

Worschech et al. '887 discloses a lubricant for a vinyl chloride polymer which contains triglycerides containing hydroxy fatty acid resides of natural fats and oils such as olive oil, linseed oil, palm oil, lard oil, herring oil, soybean oil, tallow and rapeseed oil and preferably their mixtures. ('887 C1 L65-C2 L2). Worschech et al. discloses the natural oils are selectively hydrogenated by first epoxidizing them and then hydrogenating them to open the epoxy rings. (C2 L4-22) Worschech et al. also discloses the use of a hydroxyl fatty acid residue formed from rapeseed oil as it has an iodine number less than or equal to 5. Worschech et al. discloses hydrogenated rapeseed oil, soybean oil and tallow all having iodine numbers less than or equal to 5 (C3 L65-C4 L12)

Worschech '887 discloses the availability of natural castor oil and hardened castor oil is subject to fluctuation and a substitute is needed (C1 L30-42). Worschech '887 compares the hydrogenated oils to hardened castor oil and shows they may substitute for natural castor oil or hardened castor oil (C4 L Worschech '887 discloses that its composition is suitable for thermoplastic molding. (C3 L45-47).

It would have been obvious to a person having ordinary skill in the art at the time of invention to use the rapeseed oil composition of Worschech et al. '887 having an

iodine number of less than or equal to 5 in place of the natural or hardened castor oil of Worschech '069 as it is a suitable substitute for castor oil, is suitable for use in thermoplastic lubricants and is not in short supply.

Regarding Claims 4 and 5:

Modified Worschech '069 discloses the limitations set forth above which are incorporated herein.

Modified Worschech '069 discloses the components (a) to (b) mixed esters are present in a ratio by weight of 1:3 to 9:1 (i.e. 10:30 to 90:10) thus overlapping the claimed ratio range of 20:80 to 80:20 and 40:60 to 60:40. (C3 L20-22) See MPEP 2144.05(I): "In the case where the claimed ranges "overlap or lie inside ranges disclosed by the prior art" a prima facie case of obviousness exists. *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976);"

Regarding Claim 8.

Modified Worschech '069 discloses the limitations set forth above which are incorporated herein. Worschech '069 also discloses the lubricant composition wherein component (b) comprises distearyl phthalate. (C7 L49-50).

Regarding Claims 14-15:

Modified Worschech '069 discloses the limitations set forth above which are incorporated herein. Worschech also discloses the use of natural fats and oils with iodine values below 10 as lubricants with internal and external lubricant properties for thermoplastics, preferably for polar plastics. (Worschech '069 C2 L30-34 wherein the composition is used in the shaping of thermoplastic material and C9 L25-50 where it is

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incorporated into the thermoplastic material) and (Worschech '069 C2 L55-60 wherein the composition is incorporated in the thermoplastic material)

Regarding Claims 16, 17, and 18

Rejections to claims 1-5, 8 and 14 are expressly incorporated herein.

Modified Worschech '069 discloses the limitations set forth above which are incorporated herein. Modified Worschech also discloses the method for processing thermoplastics comprising the steps of incorporating into a thermoplastic polymer a lubricant composition comprising: (a) at least one natural fats or oils with iodine values below 10 and at least one lubricant different from the natural fat and/or oil of component (a) ('069 C3 L1-22 mixed esters) and processing the thermoplastic polymer, preferably polar plastics. (Worschech '069 C2 L30-34 wherein the composition is used in the shaping of thermoplastic material and C9 L25-50 wherein the materials are added to the thermoplastic materials and then the plastic is shaped in any known manner) and (Worschech '069 C2 L55-60 wherein the composition is incorporated in the thermoplastic material).

Regarding Claim 21:

Modified Worschech et al. '069 discloses the limitations above set forth.

Worschech et al. '069 disclose the natural fat and oil in a mixture thereby meeting the limitation for fused together (Abstract) Worschech et al. '069 discloses the two components may be put together as solids or liquids, etc. meeting the limitation for fused together. (C8 L65-C9 L25 provides various embodiments wherein the two lubricants are combined and meet the limitation for "fused") "Products of identical

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chemical composition can not have mutually exclusive properties." A chemical composition and its properties are inseparable. Therefore, if the prior art teaches the identical chemical structure, the properties applicant discloses and/or claims are necessarily present. *In re Spada*, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990)

Regarding Claim 23:

Modified Worschech et al. '069 discloses the limitations above set forth.

Worschech et al. '069 discloses the lubricant composition is used in an amount of form 0.1 to 5 wt% incorporated into the thermoplastic material (C2 L55-61) falling within or alternatively overlapping the claimed range of from about 0.01 to about 10 parts by weight to 100 parts by weight of the thermoplastic polymer to be processed. See MPEP 2144.05(I): "In the case where the claimed ranges "overlap or lie inside ranges disclosed by the prior art" a prima facie case of obviousness exists. *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976)."

Regarding Claim 24:

Modified Worschech et al. '069 discloses the limitations above set forth.

Worschech et al. '069 discloses the lubricant is added to the thermoplastic material prior to effecting its shaping (C2 L60-63) and may be combined in the melt (C9 L3-5) (meeting the limitation of claim 24 (a).

12. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Worschech et al. (US 3,875,069) (referred to as '069) in view of Worschech et al.

(4,637,887) (referred to as '887 as applied to claim 1 above, and further in view of Alastalo et al. (US 2005/0009957A1)

Regarding Claim 22:

Modified Worschech et al. '069 discloses the limitations above set forth.

Worschech et al. '069 disclose the two components of the lubricant can both be liquid (C8 L65-C9 L3) Worschech et al. '069 discloses the lubricant combinations can be subject to those shaping processes suitable for thermoplastic compounds and may be added to the thermoplastic materials before processing (C9 L25-45) and the shaping can be performed in any known manner (C9 L45-50).

Worschech et al. '069 does not expressly disclose the production taking place by means of spray crystallization.

Alastalo et al. discloses the process of production of propylene copolymers produced by spray crystallization (Abstract) and [0005].

It would have been obvious to a person of ordinary skill in the art at the time of the invention to use the composition in the method of Modified Worschech et al '069 in a thermoplastic polymerization process which includes spray crystallization as this is a known method of making polymers.

13. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Worschech et al. (US 3,875,069) (referred to as '069) in view of Worschech et al. (4,637,887) (referred to as '887 as applied to claim 1 above, and further in view of Haack et al. (US 5,889,102)

Regarding Claim 9.

Modified Worschech '069 discloses the limitations set forth above which are incorporated herein. Worschech also discloses the particularly suitable as mixed esters are those based on pentaerythrite and stearic acid. (C4 L19-20) (C6 L7 discloses dipentaerythrite)

Modified Worschech '069 does not expressly disclose the lubricant combinations wherein component (b) comprises pentaerythritol tetrastearate.

Haack et al. (US 5,889,102) discloses that pentaerythritol tetrastearate is a known lubricant for use in combination with other lubricants for use with plastics. (C1 L30-50)

It would have been obvious to a person having ordinary skill in the art at the time of invention to use the pentaerythritol tetrastearate of Haack as a lubricant component in Modified Worschech '069 as Haack discloses said lubricant is suitable for use in lubricant mixtures for use with plastics and Modified Worschech '069 already contemplates lubricant components of dipentaerythritol and stearic acid.

14. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Worschech et al. (US 3,875,069) (referred to as '069) in view of Worschech et al. (4,637,887) (referred to as '887aas applied to claim 1 above, and further in view of Dohi et al. (US 2004/0014861A1)

Regarding Claim 10.

Modified Worschech '069 discloses the limitations set forth above which are incorporated herein. Worschech also discloses the particularly suitable as mixed

esters are those based on pentaerythrite and stearic acid. (C4 L19-20) (C6 L7 discloses dipentaerythrite)

Modified Worschech '069 does not expressly disclose the lubricant combinations wherein component (b) comprises dipentaerythritol hexastearate.

Dohi et al. (US 2004/0014861A1) discloses a material useful in the molding of polycarbonate material which uses dipentaerythritol hexastearate.

It would have been obvious to a person having ordinary skill in the art at the time of invention to use the dipentaerythritol hexastearate of Dohi et al. within the lubricant component in Modified Worschech '069 as Dohi et al. discloses said composition is suitable for use with plastics and Modified Worschech '069 already contemplates lubricant components of dipentaerythritol and stearic acid.

15. Claims 7 and 11-13 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Worschech et al. (US 3,875,069) (referred to as '069) in view of Worschech et al. (4,637,887) (referred to as '887) as applied to claims 1 and 16 above, in view of Dohi et al. (US 2004/0014861A1) as applied to claim 10, in view of Haack et al. (US 5,889,102) as applied to claim 9 and further in view of Lindner (US 6,818,689) Regarding Claims 7 and 11-13

Modified Worschech '069 discloses the limitations set forth above which are incorporated herein. Worschech also discloses the lubricant may comprise stearic acid as the long chained aliphatic monocarboxylic acid lubricant component. (C6 L13) Worschech also discloses the use of natural fats (C6 L23) and esters of tallow fatty alcohol (C8 L22-24).

Modified Worschech '069 does not expressly disclose component (b) as comprising stearyl stearate or wherein the hydrogenated tallow is present as the natural fat and oil.

Lindner (US 6,818,689) discloses a lubricant composition for use in the processing of polyvinylchloride comprising an ester of a monofunctional organic acid and a monohydric alcohol wherein the ester is stearyl stearate. (C3 L38-44) Lindner also discloses the use of hydrogenated triglycerides as co lubricants (C4 L42-46) such as hydrogenated tallow (C5 Table I L10)

It would have been obvious to a person having ordinary skill in the art at the time of invention to try to use the stearyl stearate and the hydrogenated tallow of Lindner in the lubricant composition of Worschech '069 as both are suitable for use with thermoplastics and are within the types of components already contemplated by Worschech '069. (I.e. stearic acid esters and esters of tallow fatty alcohol).

Regarding Claims 19:

Rejections to claims 1, 4 and 11-13 are incorporated herein.

Modified Worschech '069 discloses the limitations set forth above which are incorporated herein.

Modified Worschech '069 discloses, the hydrogenated tallow as component (a) as set forth in rejections to claims 11-13 said rejections are expressly incorporated herein.

Modified Worschech also discloses the method for processing thermoplastics comprising the steps of incorporating into a thermoplastic polymer a lubricant

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composition comprising: (a) at least one natural fats or oils with iodine values below 10 and at least one lubricant different from the natural fat and/or oil of component (a) ('069 C3 L1-22 mixed esters) and processing the thermoplastic polymer, preferably polar plastics. (Worschech '069 C2 L30-34 wherein the composition is used in the shaping of thermoplastic material and C9 L25-50 wherein the materials are added to the thermoplastic materials and then the plastic is shaped in any known manner) and (Worschech '069 C2 L55-60 wherein the composition is incorporated in the thermoplastic material).

Response to Arguments

- 16. Applicant's arguments filed February 11, 2010 have been fully considered but they are not persuasive.
- 17. Applicant argues component (b) is not disclosed by the reference. The reference discloses a lubricating composition which comprises two primary components. The first component disclosed is an ester which meets the limitation for a polyol fatty acid ester of claim 1 and 16 (i) b). The reference discloses mixed esters of aliphatic dicarboxylic acids, aliphatic polyols (i.e. for a polyol ester) and aliphatic monocarboxylic aids with 12 to 30 carbon numbers (the long chain of carbons meets the limitation for a "fatty acid").
- 18. Applicant argues the natural fat or oil is not disclosed by the references. The primary reference '069 expressly discloses that cottonseed oil may comprise component of the composition meeting the limitation for a natural oil. (C8 L42-44) '069 also indicates the natural fats and oils such as olive oil, rapeseed oil, coconut oil, palm oil, soybean oil, cottonseed oil and linseed oil are hydrogenated (C7 L37-45) '069

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discloses cottonseed oil as a component (C8 L42-44). (Noting that in the applicant's specification p5 L26-P6 L10 indicates that cottonseed oil is a suitable natural fat or oil which may be hydrogenated to achieve the claimed iodine values). Worschech '069 discloses the claimed naturally occurring oil.

- 19. Applicant appears to argue that because the natural oils disclosed in Worschech '887 which are hydrogenated are not natural fats and oil because they are epoxidized for selective hydrogenation. The reference '887 indicates that the epoxidized fat will undergo hydrogenation which will open the oxirane rings and add a hydrogen (C2 L9-15) to result in a specific/selectively hydrogenated product. Applicant expressly states that the fats and oils can occur naturally or may be obtained by hydrogenation of natural fats and oils (Spec P5 L18-25 and dependent claims11-13) without limitation. The hydrogenated fats and oils of '887 are contemplated by the applicant's explanation/definition of hydrogenated fats and oils.
- 20. Applicant argues the '887 reference teaches away from the invention because it discloses the hydrogenated fat/oil may be used as a substitute for hardened castor oil while the applicant uses it for a substitute for esters of phthalic acid (which the examiner notes would likely be solid at room temperature). This argument exceeds the scope of the claim which merely requires the presence of two components. The intended use of the composition does not does not confer patentability to the claim since the recitation of an intended use does not impart patentability to otherwise old compounds or compositions. *In re Tuominen*, 671 F.2d 1359, 213 USPQ 89 (CCPA 1982). '069

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teaches cottonseed oil, the limitation for a natural fat and/or oil with the claimed iodine number is met.

- 21. Applicant argues the '887 reference teaches away from the present claims because the triglycerides of '887 may be used as a substitute for hardened castor oil while the natural fats and oils of the instant application is a substitute for esters of phthalic acid. No claim limitations are set forth which would limit the use of either castor oil or phthalic acid in the composition or the method. Since the claimed composition is disclosed as being used in the claimed method, the limitations have been met. Further the argued "intended use" of a substitute of one component for another (which is unclaimed) does not impart patentability to otherwise old compounds or compositions. *In re Tuominen*, 671 F.2d 1359, 213 USPQ 89 (CCPA 1982).
- 22. Applicant argues the grounds of rejection for claim 19 are not set forth. Claim 19 is clearly rejected in paragraph number 8 of the original action and paragraph 15 of this action. While there is a clerical error in paragraph 8 such that claim 19 is typed therein, a complete rejection of claim 19 under Worschech et al. (US 3,875,069) (referred to as '069) in view of Worschech et al. (4,637,887) (referred to as '887 in view of Dohi et al. (US 2004/0014861A1 in view of Haack et al. (US 5,889,102) further in view of Lindner (US 6,818,689) disclosing the composition and the method with the hydrogenated tallow of claim 19 is set forth below and expressly identified as rejection of claim 19.

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Conclusion

23. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAMELA WEISS whose telephone number is (571)270-7057. The examiner can normally be reached on Mon.-Thur. 8:00am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn A. Caldarola can be reached on (571) 272-1444. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/pw/

/Glenn A Caldarola/ Supervisory Patent Examiner, Art Unit 1797